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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-third session

SUMMARY RECORD OF THE 575th MEETING

Held at the Vienna International Centre, Vienna,
on Thursday, 24 March 1994, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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The meeting was called to order at 10.20 a.m.

GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. YOUNG (United Kingdom) said his delegation welcomed the atmosphere of flexibility and pragmatism regarding working methods that had developed at the current session. He wished to endorse the views expressed the previous day by the delegate of Brazil in regard to nuclear power sources. It had long been his delegation's view that issues of a highly technical nature should be considered in the Scientific and Technical Subcommittee before being passed on to the Legal Subcommittee, preferably in the form of an agreed set of propositions which could serve as a basis for the drafting of legal documentation. In the high technology area, the progression from science to policy to law was to be favoured lest misguided rules be propounded.

2. Although his delegation had submitted a working paper on revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (A/AC.105/C.2/L.192), its view was that revision should only be embarked on after due consultation and discussion, and, most importantly, following agreement on the scope and aims of such revision. Since no such agreement yet existed, he believed that any consideration of the matter in the Subcommittee would be premature. He therefore supported the views expressed by other delegations that the amount of time allocated to that item of the agenda could be considerably reduced, and the overall duration of the session shortened, without prejudice to what might happen in future years.

3. Regarding the issue of space debris, the same considerations applied. Debate on that issue had only just begun, and it would be some time before all delegations had clarified their positions on such a highly technical matter. Indeed, much fundamental research still needed to be undertaken to evaluate the nature and extent of the problem. While he did not doubt that space debris would be a suitable issue for the Subcommittee's agenda in due course, he believed that it would be sensible to allow the Scientific and Technical Subcommittee time to assess the problem. Only when the Subcommittee knew the nature and extent of that problem, and what practical scientific means existed to deal with it, could it begin to consider appropriate legal solutions.

4. Mr. NAKAMURA (Japan) said that, should the Principles Relevant to the Use of Nuclear Power Sources in Outer Space agreed upon two years ago become technologically obsolete, his delegation would have no hesitation in agreeing to review and adapt them. Currently, however, it regarded implementation of the Principles as more important, and would prefer that an opportunity be given for them to reveal their merits.

5. Concerning the question of equitable access to, and use of, the geostationary orbit, article II of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (the Outer Space Treaty), clearly stated that outer space was not subject to national appropriation by claim of sovereignty. His delegation would prefer that it should be left to the International Telecommunication Union (ITU) to develop new rules as they became necessary.

6. With regard to the definition and delimitation of outer space, it was his delegation's view that in the light of the rapid progress currently being made in the field, application of definitions at the present stage could have the effect of obstructing future space development. It therefore considered that formulation of a definition at the current session was unnecessary. Any consideration of a specific legal regime to cover aerospace objects would likewise be premature.

7. Mr. EL KOUNY (Egypt) said that the world was witnessing a series of changes that augured well for international détente, and opened up new possibilities for a regime of cooperation that would put science at the service of all peoples without discrimination, so that all could have equal access to the benefits of technological advances. His delegation welcomed efforts made to procure the non-proliferation of weapons in outer space, efforts which were in accord with Egypt's position on disarmament and with the numerous initiatives it had taken with a view to the reduction or elimination of weapons of mass destruction.

8. As to the problem of space debris and the threat it posed to the environment, his delegation believed it was high time for an examination of all the legal aspects of the question, in parallel with a study by the Scientific and Technical Subcommittee of the technical aspects, with a view to developing an integrated regime that would reduce the dangers of space debris to a minimum. A start should be made as soon as possible on discussion of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

9. While recognizing the importance of the technical role played by ITU in formulating regulations for the use of the geostationary orbit, and despite his belief in the importance of coordination between ITU and the Subcommittee, he was still convinced that the Committee on the Peaceful Uses of Outer Space and its two Subcommittees had a mandate in all matters relating to that orbit, and that the setting up of a specific legal regime providing for access to it and use of it by all States, and particularly the developing countries, on an equitable basis, was a priority task. Such a regime should include new principles and methodologies that would ensure equitable use of the geostationary orbit, and would complement the role of ITU. In that connection, he supported working paper A/AC.105/C.2/L.182/Rev.1. The reinforcement of international cooperation in the peaceful uses of outer space, with a view to meeting the needs of developing countries and strengthening their ability to benefit from advances in space technology, should be one of the chief priorities for United Nations efforts in the field.

10. Mr. FLORESCU (Romania) said that the Principles Relevant to the Use of Nuclear Power Sources in Outer Space adopted by the General Assembly in resolution 47/68 should be strengthened, first through efforts by the Scientific and Technical Subcommittee to create a better framework for the use of nuclear power sources, and secondly through efforts by the Legal Subcommittee to develop legal norms.

11. With respect to Principle 4 ("Safety assessment"), his delegation believed that prior notification by the launching State of the launch of a space object carrying a nuclear power source was essential, in order to avoid possible damage to the environment of neighbouring States.

12. His delegation considered that the definition and delimitation of outer space was necessary because of the different legal regimes that should cover space and outer space respectively. Delimitation should be based on the deliberations and conclusions of the Scientific and Technical Subcommittee. He appreciated the useful working paper submitted by the Russian Federation at the thirty-first session of the Legal Subcommittee (A/AC.105/C.2/L.189), and considered that the draft questionnaire on aerospace objects should cover the legal as well as the technical aspects of the problem. The questionnaire could be taken into consideration in future debates on the item.

13. He wished to reaffirm his delegation's view that the geostationary orbit was a limited resource, and that access to it should be free to all countries, including those that did not as yet have the capacity to launch satellites. The interests of such countries should be safeguarded by ensuring that the legal principles adopted took into account their possible future technological development. In that connection, the suggestion by the Brazilian delegation for the holding of a seminar on possible legal implications of the existence of space debris in the geostationary orbit was of great interest.

14. His delegation shared the ideas put forward in working paper A/AC.105/C.2/L.182/Rev.1, but was not sure that adoption of a resolution on the matter would necessarily be effective. Romania was confident that States that had already developed space capabilities would be willing to cooperate with developing countries. He noted that the Russian Federation had already indicated its readiness to cooperate with the countries of Eastern Europe.

15. Mr. BARSEGOV (Russian Federation) said that, given the range of issues involved and the polarity of views, the Subcommittee would not, unfortunately, be able to decide at present upon the format and content of a questionnaire to be sent to Governments. The caution of delegations was understandable; the balance of interests had to be taken into account, as well as the need for a compromise between law and policy. As far as methods of work were concerned, his delegation was fairly satisfied. Over the years, the Subcommittee had evolved certain rituals, and it was not always easy to decide how sensible they were. His delegation was in favour of retaining a three-week session, which would allow time to discuss the issues and reach agreement. Even if some topics were not yet ripe for a full exchange of views, any spare time could be used for work on other items. Because of the nature of the Subcommittee's work, its debates must be thorough and its decisions carefully weighed. There was also a need for a certain inertia to be overcome; an example was the situation regarding the proposed questionnaire. To guide the future course of the Subcommittee's discussions, there was a need for facts, which could be obtained by means of a survey. His delegation did not think that the work on delimitation of outer space should be regarded as unrealistic. He hoped that the Subcommittee could agree, at its next session, on a final version of the questionnaire.

16. Mr. ABARRY (Niger) said that he wished to reaffirm the importance that his country attached to cooperation between States in the use of knowledge acquired in the space field, and particularly to the application of that knowledge in communications, the environment and the prevention of natural disasters. As a country which suffered the twofold scourge of drought and desertification, Niger regarded such cooperation as an effective means of

halting the disturbing trend towards deterioration of the environment in the subregion to which it belonged. Countries like his needed concrete action, rather than words and ideas. It was the task of the Subcommittee to establish clear legal bases for cooperation in the transfer of know-how, technology and skills in line with the principles of solidarity, accessibility and equitability.

17. His delegation supported the views expressed by others concerning the use of the geostationary orbit and of nuclear power sources in outer space. Special attention should be given to the interests of those countries that did not at present have the ability to undertake their own space programmes, as well as to the safety of nuclear power sources and the risk of nuclear power sources colliding with space debris. His country also agreed that any revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space should be justified by scientific and technological developments.

18. He noted the views expressed by a number of speakers concerning the Subcommittee's use of time and of conference services. Every United Nations organ, in the present difficult financial circumstances, had an obligation to take into account the costs of each hour of meeting time.

19. Mr. FASAN (International Astronautical Federation) said he hoped that the symposium organized by his Federation in conjunction with the current session of the Subcommittee, in cooperation with the European Centre for Space Law, on legal questions concerning commercial activities in space had been of interest to delegations. The theme of his Federation's next Congress, to be held in Jerusalem from 9 to 14 October 1994, would be "Space Cooperation for Tomorrow's World". At each annual congress a colloquium on the law of outer space was held by the International Institute of Space Law; the 1994 colloquium would focus on new legal developments in satellite communication, definitional issues in space law, liability in commercial space activities and other legal matters related to the peaceful uses of outer space.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (agenda item 4) (continued) (A/AC.105/404, 544 and 547; A/48/20)

20. Mr. ULLAH (Pakistan) said that although the current item had been on the Subcommittee's agenda for a long time no progress had been made in settling the various issues involved; however, it was necessary to define and delimit outer space in order to guard against unhindered violation of national airspace. The draft questionnaire concerning aerospace objects and the points concerning a legal regime for those objects proposed in document A/AC.105/C.2/L.189 could form a suitable basis for further discussion. Equitable access to the geostationary orbit, which was a unique natural resource, should certainly be ensured to all States, taking into account the special interests and current limitations of the developing countries in particular. He hoped that the issue would be resolved amicably.

21. Mr. MARÍA CURIA (Argentina) said that the Subcommittee's consideration of the item under discussion had been assisted at the thirty-second session by the preparation of a draft questionnaire on aerospace objects. Potentially

important issues were involved, such as those relating to the safety of air traffic, but little progress could be made without the cooperation of the space Powers, and it was to be hoped that they would soon be in a position to comment on the draft questionnaire so that the work could proceed. He noted that the representative of the Russian Federation felt that the questionnaire could be finalized at the next session.

22. Document A/AC.105/C.2/L.192 on the geostationary orbit, submitted by Colombia at the last session, was helpful in that it included the concept that the orbit was a part of outer space and therefore governed by the principles set forth in the 1967 Outer Space Treaty, and the concept that the geostationary orbit was a limited natural resource that should therefore be used rationally and equitably. The document also recognized that the development of a special legal regime must be complementary to the ITU treaties, and not a replacement for them. Those concepts should be taken up by the Subcommittee, as agreement on them would establish a good basis for any future elaboration of a special legal regime.

23. The question of space debris was particularly relevant in the geostationary orbit, and should be addressed as soon as possible, either under the present item or as a new agenda item.

24. Mr. SUAREZ (Mexico) said that questions concerning the definition and delimitation of outer space and the character and utilization of the geostationary orbit should be resolved as quickly as possible. His delegation supported the suggestion that the inner perigee of satellites in orbit should be the lower limit of outer space, confirming the rule of law that all satellites in Earth orbit were in outer space.

25. His delegation did not share the view that it was unnecessary to establish a limit between airspace and outer space, and supported the idea of studying the legal aspects of aerospace flights as a good way out of the stalemate on the issue.

26. Members of the Subcommittee should intensify their participation in the debates. The opinion of the International Civil Aviation Organization, particularly concerning the content of document A/AC.105/C.2/L.189, would also contribute to an updating of the legal regime applicable to aerospace objects.

27. Turning to the question of the geostationary orbit, he stressed the need to devise a legal regime which would provide for its rational and equitable utilization, to prevent its saturation by artefacts and debris, and would recognize it as a limited natural resource which should be utilized in the most efficient manner for the benefit of humanity through international cooperation and understanding, excluding any possible claim of an extension of sovereignty. In that connection, the technical role of ITU should not be disregarded. There was a need to design a legal framework to regulate equitable access to and utilization of the geostationary orbit, taking account of its special characteristics and the needs of the developing countries.

28. It was essential to link the question of space debris with that of the geostationary orbit. Gaps in the legal regime of ITU should be identified so that the Legal Subcommittee could fill them, without prejudice to the role played by ITU.

29. Mr. HE QIZHI (China), referring to the question of the geostationary orbit, said that his delegation had no difficulty in accepting the Colombian working paper (A/AC.105/C.2/L.192) as a basis for discussion. There were insurmountable difficulties in the way of achieving consensus at present on the definition and delimitation of outer space, but in regard to the geostationary orbit it should be possible to break the deadlock. Some delegations were doubtful whether the Subcommittee had a mandate to elaborate new principles. His own delegation took the view that the mandate given by the General Assembly to the Committee on the Peaceful Uses of Outer Space and to its Legal Subcommittee was a fairly broad one. It did not preclude the development of new legal instruments to supplement the regime already established by ITU. In recent years, ITU had made good progress towards the goal of rational and equitable use of the geostationary orbit. However, there was still room for improvement, especially since ITU dealt with the question mainly from a technical standpoint. There were legal and political issues to be resolved in order to complete the present regime. The roles of ITU and the Committee on the Peaceful Uses of Outer Space were complementary. The Legal Subcommittee should ascertain what political and legal gaps existed in the present regime for the orbit as elaborated by ITU, and endeavour to fill those gaps. The Colombian working paper contained a number of useful suggestions in that regard. New elements could be added, including the need to use the geostationary orbit exclusively for peaceful purposes, and the removal of spent satellites and space debris. Those questions, which involved both political and legal factors, fell outside the scope of the ITU regime. The Subcommittee should be working on broader legal principles. He noted that a significant change had taken place in the attitude of the equatorial countries. All members of the Subcommittee should rethink their approach, and endeavour to reach a consensus, with the aim of producing a draft instrument as a contribution to the United Nations Decade of International Law. The Subcommittee could refer the question of the removal of spent satellites and space debris to the Scientific and Technical Subcommittee for preliminary examination. The Legal Subcommittee could then prepare legal provisions on the question, to flesh out the proposals in the Colombian working paper.

30. Mr. RASHKOW (United States) observed that, despite the lack of a definition of outer space, enormous strides had been made in the exploration and use of outer space over the past 30 years, with significant benefits to the international community. To seek to establish an arbitrary line separating airspace from outer space would engender the risk of confusion, and perhaps hinder the peaceful exploration and use of outer space. As for the proposed questionnaire, his Government had serious doubts whether it could lead to useful results, although his delegation intended to address the issue in good faith. As for the geostationary orbit, in his delegation's view the Legal Subcommittee did not have a mandate to develop principles for a new legal regime. Its mandate had been carefully drafted, and did not imply that the Subcommittee should elaborate a new legal regime or new legal principles.

31. Turning to the question of the geostationary orbit, he said that the Colombian working paper was a constructive contribution which should help to bridge differences in the Subcommittee. However, his delegation held to the view that the geostationary orbit, as an integral part of outer space, could not be the subject of claims of sovereignty or of preferential rights by any one State or group of States. As for the mandate of the Subcommittee, he agreed that it differed from that of ITU, but that was not inconsistent with

the conclusion that ITU had a specific mandate with regard to the rational and equitable use of the geostationary orbit. The Subcommittee had no mandate to draft principles for such use, since it had no technical competence to do so. That was the task of ITU.

32. He expressed the view that the discussions that had occurred in recent sessions of the Subcommittee had proven useful in narrowing some of the differences among members on this subject and concurred with the view expressed by other members of the Subcommittee that all its members should strive to make progress on all items of its agenda, in line with its mandate and practices.

33. Mr. REY CORDOBA (Colombia) said that the statements of the delegation of the Russian Federation showed a real awareness of the need for outer space to be used for peaceful purposes and for the benefit of all humanity. It was indeed noteworthy that a space Power should raise the question of the delimitation of outer space. That contrasted with the attitude of those who objected to all regulation and delimitation. The Subcommittee's mandate to take up questions such as those relating to the geostationary orbit was clear. It was spelt out in General Assembly resolution 48/39, paragraph 4 (b). The General Assembly expected the Subcommittee to study all the issues involved from a legal, not a political, point of view. The Subcommittee's task was to make proposals regarding space law. It should not try to take over the functions of the General Assembly; it should concentrate on its task of formulating legal principles. The Colombian paper sought to set out general principles of law, taking into account the relevant provisions of the 1967 Outer Space Treaty and of the Nairobi International Telecommunication Convention, and aimed to develop a set of legal norms to be referred to ITU as a framework for its task of administering the geostationary orbit and allocating radio frequencies. The two bodies had complementary functions. The Subcommittee must focus on its task of elaborating legal standards to ensure that outer space was used for the benefit of all mankind.

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (agenda item 5) (A/AC.105/544; A/48/20)

34. The CHAIRMAN drew attention to the Subcommittee's report on its thirty-second session (A/AC.105/544), in particular to chapter III, to annex III and to section B of annex IV. The Subcommittee's work had been reviewed at the thirty-sixth session of the Committee on the Peaceful Uses of Outer Space. The Committee's report was contained in document A/48/20. The General Assembly, in resolution 48/39, had recommended that the Subcommittee should continue consideration of the item taking into account the concerns of all countries, especially those of the developing countries.

35. Mr. TELLES RIBEIRO (Brazil) said that he would like to comment on the background to working paper A/AC.105/C.2/L.182/Rev.1, submitted by a group of countries, including his own, at the previous session. The item under discussion had first been included in the agenda of the Legal Subcommittee at its twenty-seventh session in 1988. Initial debate on the item had been intense but inconclusive. At the twenty-ninth session, the Subcommittee had agreed to establish a Working Group to discuss the item, to begin its work at

the thirtieth session. Discussions at the twenty-ninth session had centred on general themes relating to international cooperation and the sharing of the benefits of space exploration. There had also been much discussion of certain terms in the 1967 Outer Space Treaty, such as "benefits", "interests", "non-discriminatory" and "equal access", and the need to ensure equitable access to the benefits of outer space. At the thirtieth session, discussion had focused on the need for specific guidelines for international cooperation in the peaceful uses of outer space. Brazil and eight other countries had presented a working paper (A/AC.105/C.2/L.182) containing draft "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes", the basic thrust of which was the definition of equitable parameters to allow all States access to the benefits concerned. That draft set of principles had been vigorously debated during the thirty-first session of the Subcommittee.

36. At the thirty-second session in 1993, the sponsors, joined by Colombia, had submitted a revised set of principles (A/AC.105/C.2/L.182/Rev.1). During the discussions, the use of the term "principles" had been questioned in view of the possible conflict with the "Principles" enshrined in the 1967 Outer Space Treaty, but it had been pointed out that the 1967 Treaty constituted a starting point rather than an end.

37. The numerous comments on principles I, II and III had served to clarify viewpoints and suggest ways of reaching agreement. The fact that principles IV, V and VI had provoked little reaction suggested that consensus, on those provisions at least, might not be far away.

38. His delegation believed that the principles concerned were becoming increasingly relevant owing to the new avenues of cooperation opened up by the end of the Cold War. Indeed, international cooperation was often regarded as the best way of achieving national goals. The ongoing partnership between Brazil and China in the development and construction of two remote-sensing satellites, for example, showed how two developing countries could cooperate effectively in a mutually beneficial, equitable and non-discriminatory manner. The possibilities for cooperation in other areas such as remote sensing for environmental applications, telecommunications, meteorology and education were already being explored. It was important that countries still without access to space technology should have access not only to that technology but to the means of utilizing it for their socio-economic development.

39. The sponsors firmly believed that the draft set of principles contained in document A/AC.105/C.2/L.182/Rev.1 would foster international cooperation in the peaceful uses of outer space for the benefit of all mankind, and they would endeavour to clarify their scope, their objectives and the concepts behind them.

40. The CHAIRMAN said that the Brazilian representative's statement on working paper (A/AC.105/C.2/L.182/Rev.1) would be considered in the Working Group on the Benefits of Outer Space established by the Subcommittee at the 572nd meeting.

OTHER MATTERS

41. Mr. MARÍA CURIA (Argentina) said that he realized that press releases were not official documents, but that he wished to request a correction to press release UNIS/OS/55, which misrepresented a comment he had made at the previous meeting. He had not suggested that the "Legal Committee consider rotating its meeting venues" but that it begin thinking about the question of its headquarters to enable a consensus to be reached on that matter and on the question of rotation.

42. The CHAIRMAN said that the Secretariat would issue a corrigendum.

43. Mr. HE QIZHI (China) said that a solution should be found to the problem of the misrepresentation of delegation's statements in press releases.

44. The CHAIRMAN stressed that press releases, unlike summary records, were not official documents.

45. Mr de YTURRIAGA (Spain) asked whether the booklet entitled United Nations Treaties and Principles on Outer Space (A/AC.105/572), a copy of which he had just received in English, would be issued in Spanish.

46. Mr. JASENTULIYANA (Secretary of the Subcommittee) said it was hoped that the booklet would be issued in all languages. After consultations with some delegations it had been agreed to issue the English version in advance of the other versions.

The meeting rose at 12.15 p.m.